

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0254P

Penalty

For Tax Years 2000-02

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration—Penalty

Authority: IC § 6-8.1-10-2.1; 45 IAC 3.1-1-105

Taxpayer protests the imposition of a penalty.

STATEMENT OF FACTS

Taxpayer is a partnership in the lumber industry. As the result of an investigation, the Indiana Department of Revenue ("Department") issued proposed assessments for penalties for the tax years in question. Taxpayer protests these penalties. Further facts will be supplied as required.

I. Tax Administration—Penalty

DISCUSSION

Taxpayer protests the imposition of penalties for the tax years 2000, 2001, and 2002. The Department determined that, although there were no underlying liabilities, taxpayer should have been filing returns. The Department imposed a penalty of \$250 for each year which it determined taxpayer should have been filing a return, as explained by IC § 6-8.1-10-2.1(g), which states:

A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

Since taxpayer is a partnership, the Department also referred to 45 IAC 3.1-1-105, which states:

- (a) A partnership must file an annual return, IT-65, with the department, disclosing each partner's distributive share of partnership income, on or before the fifteenth day of the fourth month following the close of the partnership's accounting year. Any partnership doing business in Indiana or deriving gross income from sources within Indiana is required to file the return.
- (b) As used in this section, "partner's distributive share" means the amount determined under Section 704 of the Internal Revenue Code and its prescribed regulations before any modifications required by Indiana tax statutes.
- (c) A Form IT-65 must be filed with Indiana by a bank with common trust funds filing a Form 1065 for federal income tax purposes. When reporting for Indiana purposes, a bank with common trust funds must comply with the provisions of Regulation 1.6032-1 of the Internal Revenue Code.

Taxpayer protests that it does not owe these penalties since it was not in business prior to 2003. Taxpayer supplied copies of its registration to collect sales tax and application for employer identification number, both of which indicate 2003 as the starting date for those purposes. The Department's investigation was initiated in late 2005. The registration to collect sales tax is undated and the application for employer identification number is dated February 14, 2006.

The liabilities at issue in this protest are the penalties for failure to file returns partnership income tax. A review of the Department's records establishes that taxpayer registered the business with the Department in 2000. Since taxpayer registered with the Department in 2000, and since 45 IAC 3.1-1-105 requires a partnership to file returns with the Department, the Department was correct to impose penalties for failure to file returns for 2000, 2001 and 2002 under IC 6-8.1-10-2.1(g).

FINDING

Taxpayer's protest is denied.

WL/BK/DK September 18, 2006